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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

No. 16-CR-00063-SMJ-2

13 vs.

14 Notice of Mandatory Detention
15 After Guilty Plea

16 ALBERT CASTRO, JR.,

17 Defendant.

18 Plaintiff, United States of America, by and through MICHAEL C.
19 ORMSBY, United States Attorney for the Eastern District of Washington, and
20 Scott T. Jones, Assistant United States Attorney for the Eastern District of
21 Washington, hereby provides Defendant, ALBERT CASTRO, JR., and
22 Defendant's counsel, Christopher Black, notice that the United States will be
23 requesting, as is statutorily-required, detention after Defendant enters his plea of
24 guilty on March 3, 2017 to Child Sex Trafficking, in violation of 18 U.S.C.
25 § 1591(a)(1), (a)(2), (b)(1), (c).

26 **I. INTRODUCTION**

27 Defendant, ALBERT CASTRO, JR., has indicated he intends to enter a plea
28 of guilty to the charge of Child Sex Trafficking, in violation of 18 U.S.C.
§ 1591(a)(1), (a)(2), (b)(1), (c), at a hearing scheduled before this Court on March
Notice of Mandatory Detention After Guilty Plea - 1

3, 2017. Defendant is not in custody. The United States hereby notifies the Court and Defendant that, following Defendant's entry of a guilty plea, the United States will seek detention of Defendant pending sentencing, pursuant to 18 U.S.C. § 3143(a).

II. DISCUSSION

A. Title 18 U.S.C. § 3143(a)(2) Applies and Mandates Detention

Due to the nature of his conviction, the Defendant is subject to mandatory detention pending sentencing pursuant to 18 U.S.C. § 3143(a)(2). Title 18 U.S.C. 3143 (a) governs the release or detention of a defendant pending sentencing and Section 3143(a)(2) mandates, with narrow exceptions, detention of a defendant convicted of a violation of 18 U.S.C. § 1591. The law provides in relevant part:

(2) **The judicial officer shall order** that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 [which specifically includes 18 U.S.C. § 1591] and is awaiting imposition or execution of sentence **be detained unless –**

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; **and**

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

18 U.S.C. § 3143(a)(2) (emphasis added).

Following his guilty plea, Defendant will have been found guilty of a violation of 18 U.S.C. § 1591. He will therefore be subject to mandatory detention under 18 U.S.C. § 3143(a)(2).

1 By its plain language, 18 U.S.C. § 3143(a) pertains to defendants who have
2 “been found guilty of an offense” and are “awaiting imposition or execution of
3 sentence.” The fact that Defendant in the case at bar intends to plead guilty, as
4 opposed to having been found guilty by a jury following trial, does not alter the
5 fact that, under the law, upon Defendant’s guilty plea Defendant will have been
6 “found guilty of an offense.” *See United States v. Cazares*, 121 F.3d 1241, 1247
7 (9th Cir. 1997) (“The effect [of a guilty plea] is the same as if [defendant] had been
8 tried before a jury and had been found guilty on evidence covering all of the
9 material facts.”) (quoting *United States v. Davis*, 452 F.2d 577, 578 (9th Cir.
10 1971)). Accordingly, following Defendant’s guilty plea in the instant case, section
11 3143(a) will govern Defendant’s release or detention. *See United States v.*
12 *Devinna*, 5 F. Supp. 2d 872, 872 (E.D. Cal. 1998) (Having pleaded guilty to a
13 “crime of violence,” defendant is subject to a provision mandating detention
14 pending sentencing. *See* 18 U.S.C. § 3143(a)(2).”); *United States v. Bryant*, 895 F.
15 Supp. 218, 220 (N.D. Ind. 1995) (“the guilty pleas must be considered equivalent
16 to a finding of guilty for purposes of Section 3143(a)”).

17 Defendant intends to plead guilty, so there is not a substantial likelihood that
18 a motion for acquittal or new trial will be granted. In addition, a government
19 attorney has not recommended and will not recommend that no sentence of
20 imprisonment be imposed in this case.

21 Thus, even if this Court finds by clear and convincing evidence that the
22 defendant is not likely to flee or pose a danger to the community, since this is not a
23 case where there is a substantial likelihood that a motion for acquittal or new trial
24 will be granted or that the Government will not be recommend a sentence of
25 imprisonment, on its face, § 3143(a)(2) appears to foreclose the opportunity for
26 Defendant here to be released on bond pending sentencing.

1 There is an exception to avoiding mandatory detention, under 18 U.S.C.
2 § 3145(c), if Defendant can make a showing of exceptional circumstances.

3 B. Defendant Does Not Fall Within the Exception of § 3145(c)

4 Title 18 U.S.C. § 3145(c) provides for an exception from mandatory
5 detention under 18 U.S.C. § 3143(a)(2) where there are exceptional reasons why
6 detention would not be appropriate:

7 A person subject to detention pursuant to section 3143(a)(2) or
8 (b)(2), and who meets the conditions or release set forth in
9 section 3143(a)(1) or (b)(1), may be ordered released, under
10 appropriate conditions, by the judicial officer, if it is clearly
11 shown that there are **exceptional reasons** why such person's
12 detention would not be appropriate.

13 18 U.S.C. § 3145(c)(emphasis added). The term “exceptional reasons” is not
14 defined within § 3145. Courts have generally read the phrase “exceptional
15 reasons” to mean circumstances that are “clearly out of the ordinary, uncommon,
16 or rare.” *See United States v. Koon*, 6 F.3d 561, 563 (9th Cir. 1993).

17 The Ninth Circuit has found that “the district court has authority to
18 determine whether there are exceptional reasons,” and has broad discretion in
19 making the determination. *United States v. Garcia*, 340 F.3d 1013, 1014 n.1, 1018
20 (9th Cir. 2003). In *Garcia*, the Ninth Circuit addressed the meaning of
21 “exceptional reasons” but “place[d] no limit on the range of matters the district
22 court may consider.” *Id.* at 1018-19. The Court of Appeals emphasized, however,
23 that the circumstances warranting release must indeed be exceptional:

24 Hardships that commonly result from imprisonment do not meet
25 the standard. The general rule must remain that conviction for a
26 covered offense entails immediate incarceration. Only in truly
27 unusual circumstances will a defendant whose offense is subject
28

1 to the statutory provision be allowed to remain on bail pending
2 appeal.

3 *Id.* at 1022.

4 The Government respectfully submits that in this case there are no
5 “exceptional reasons” under § 3145(c). Accordingly, even if Defendant is able to
6 establish by clear and convincing evidence that he is not a flight risk or a danger to
7 any other person or to the community, detention is mandatory.

8 **III. CONCLUSION**

9 For the foregoing reasons, the United States is bound under 18 U.S.C.
10 § 3143(a)(2) to seek Defendant’s detention following his plea of guilty, and
11 respectfully submits that Defendant’s circumstances do not qualify as exceptional
12 so as to warrant his release under 18 U.S.C. § 3145(c).

13 DATED March 1, 2017.

14
15 Michael C. Ormsby
16 United States Attorney

17 *s/Scott T. Jones*
18 Scott T. Jones
19 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following, and/or I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant(s):

Defendant, via counsel.

s/Scott T. Jones

Scott T. Jones

Assistant United States Attorney